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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/792,275	03/04/2004	Siegmar Blumentritt	03100196AA	4227

7590 06/16/2006
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EXAMINER

GIBSON, RANDY W

ART UNIT PAPER NUMBER

2841

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Applicati n N .	Applicant(s)	
	10/792,275	BLUMENTRITT ET AL.	
	Examiner	Art Unit	
	Randy W. Gibson	2841	

-- The MAILING DATE f this communication appears on the c ver sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-20 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed June 7, 2006 have been fully considered but they are not persuasive. With regards to the applicant's argument regarding the examiner's proposed combination of Blumentritt et al (US # 5,609,162) in view of Mariani (FR # 2,802,795), the applicant: (a) seems to have mischaracterized the examiner's rejection; (b) attacks the references piecemeal by commenting on their deficiencies when viewed alone; and, (c) seems to have made the erroneous assumption that a literal bodily incorporation of the device of Mariani into the apparatus of Blumentritt et al is the legal test for obviousness.

Applicant's statement that the Blumentritt reference is owned by the same assignee as the current application is noted; applicant did not explain why this particular fact was considered to be relevant.

With regards to argument (a), it seems irrelevant that the Mariani reference shows the load cells 17 located above the bearing plate 6, since the reference to Blumentritt seems to teach the claimed limitation of placing the load cells 3 below the bearing plate 1. The reference to Mariani needs to have the load cells located where they are since the Mariani reference lacks the software required to calculate the center of gravity of a force on a single integral base plate given the readings from four load cells located at the corners. Since Blumentritt teaches this limitation, the arrangement of the load cells shown in the Mariani reference -- that is, directly beneath the patent's feet as shown -- would seem unnecessary. The only real question of obviousness is

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whether given the arrangement of Blumentritt (load cells beneath the base plate), would one of ordinary skill in the art have seen a need to place lifts on the top of Blumentritt's scale in order to improve it -- NOT whether it would have been obvious for one to have robotically incorporated the lifts of Mariani, complete with their now redundant extra set of load cells, bodily into the device of Blumentritt, as applicant argues. Since applicant did not attempt to rebut the examiner's main argument, then the applicant must be conceding that the examiner's rejection is valid.

In response to argument (b), it is black letter law that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to applicant's argument (c), that is, that neither reference provides any guidance on how the modification would be made -- a combination of Blumentritt with Mariani may include the measurement cells above the support plate and under the bearing surfaces in order to accommodate the operations of Mariani, and this is opposite of what is required in claim 1 (e.g., a support plate mounted on the measurement cells); if the combination were made, the combined element would have the lifting devices below the support plate in order to accommodate the operations of Mariani -- the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have

suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

With regards to claim 13, applicant argues that "...it is noted that the prior art does not show or suggest the specified planetary gear configuration in the context of the measuring device of the present invention or of any other measuring device." Exactly why this fact is considered to be relevant is not explained. Since the applicant has apparently challenged the examiner's taking official notice of the use of planetary gear systems in jack devices, the examiner is introducing a rebuttal reference to answer applicant's concerns. Since this is a rebuttal reference, adding this reference does not constitute a new grounds of rejection; see **MPEP** § 2144.04 (D) ("If the examiner adds a reference in the next Office action after applicant's rebuttal, and the newly added reference is added only as directly corresponding evidence to support the prior common knowledge finding, and it does not result in a new issue or constitute a new ground of rejection, the Office action may be made final.").

With respect to applicant's conclusory statements about claim 16 being non-obvious because the planetary gear system is not obvious (the spindle screw with an internal threaded sleeve of claim 11 being a necessary part of a planetary gear transmission), the examiner disagrees that planetary gear transmissions are not obvious, so this argument fails as well.

With respect to applicant's arguments regarding claims 5-9, the applicant does not explain his remark that: "...it appears that the Examiner has mischaracterized the lifting devices shown in Madani. Mariani does not show lifting devices which are parallel

to each other.” Why not? See Figure 2 of Mariani, for example. Mariani also states that the support zones 4 “are aligned” (top of page 6). This seems to indicate parallel positions. No further comment is deemed necessary.

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-9 and 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blumentritt et al (US # 5,609,162) in view of Mariani (FR # 2,802,795) and Scoville et al (US # 4,986,802). Blumentritt disclose a measurement device with a display device (17) for displaying a “force action line” (Col. 3, lines 18-46) and a support plate (1) mounted on measurement cells (3). It is noted that Blumentritt uses data from his four measurement cells to determine the position of the “force action line” so that a doctor can easily visualize when the patient is vertically balanced, or not, by having even pressure (as sensed by the four measurement devices 17) on both feet (I.E.: the barycentric point where a patient has level posture). Blumentritt does not disclose: (i) the lifting devices set upon the support plate (1) for lifting independent foot bearing surfaces; (ii) a spindle with a planetary gear configuration (claim 13); or, (iii) the specific diameter of the spindle screw (claim 16).

Mariani discloses four bearing surfaces (4) with measurement cells (17), and lifting devices (5) arranged on a support plate (6) and under the bearing surfaces (Fig.

4). Mariani disclose that the bearing surfaces are independently adjustable (p. 5). The expressly stated purpose of having the vertically adjustable support surfaces are to allow the doctor to see in real time what effects the variations in elevation of one foot relative to the other have on the barycentric point of a person in order to eliminate the trial and error techniques previously employed to determine what thickness of sole is necessary for each shoe to give the patient level posture (p. 11).

Regarding element (i), above, it would have been obvious to provide the device of Blumentritt with two independently vertically adjustable bearing surfaces, one for each foot, as taught by the example of Mariani, to eliminate the trial and error techniques previously employed to determine what thickness of sole is necessary for each shoe to give the patient level posture.

Regarding the limitation in claim 13 that the lifting device has a planetary gear configuration, the examiner took official notice in the last office action that such a configuration is old. Since applicant has challenged the examiner's taking of official notice, the examiner cites Scoville et al as an example of planetary gear systems being used in a lift. Since Scoville teaches that such a transmission has the advantages of "high torque capacity" in a "compact package", It would have been obvious to the ordinary practitioner to use a lifting device with a planetary gear configuration based on its art recognized suitability for its intended use. See *MPEP* §§ 2144.03 & 2144.07.

Regarding the limitation in claims 16 & 20 that the spindle screw of Mariana must be of a specific diameter, it has been held that "...where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable

ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). See also **MPEP** § 2144.05(II). It would have been obvious to the ordinary practitioner to use a spindle screw that was of sufficient thickness to support the maximum expected weight of someone from the general population so that a patient did not break the machine.

With respect to claim 2, the lifting devices disclosed by Mariani are steplessly adjustable (p. 6).

With respect to claim 3, the lifting devices disclosed by Mariani are of necessity individually adjustable (pp. 5 & 6).

With respect to claim 4, the lifting devices disclosed by Mariani are electric (p. 6).

With respect to claims 5-9 the lifting devices disclosed by Mariani are of necessity arranged parallel to each other and are located on both sides of a center plane depending on how one defines the center plane (p. 5; Fig. 2).

With respect to claims 11, 12, 15 this type of lifting device is being used by Mariani (Fig. 4).

Regarding the limitations of claims 17-19, the laser beam as described is disclosed by Blumentritt; see *supra*.

Conclusion

3. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the

base claim and any intervening claims. Mariani discloses only two (2) lifting devices, and there is no motive in the art of record to use three (3).

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson shows calculating the position of an applied force using four load cells attached to a rigid support plate. The other references newly cited show planetary gear transmissions being used in screw type jacks, such as the type of jack used in the Mariani reference.

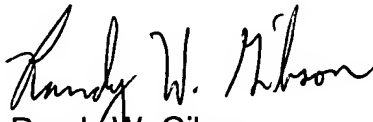
5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kamand Cuneo can be reached on (571) 272-1957. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Randy W. Gibson
Primary Examiner
Art Unit 2841